IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 3453 OF 1998.

Techcons Constructional Engg.Co.,
a partnership firm formed and
registered under the provisions of
the Indian Partnership Act, 1932 and
having its principal palce of business
at C-8, Samrat, M.V.Road, Andheri
(East), Mumbai 400 069. ... Plaintiff.

Versus.

Chemox Laboratories Limited,
(formerly Bentoll Chemical Products
Ltd.) a public limited company formed
and incorporated under the Companies
Act, 1956 having its registered office
at Pooran Asha Building, 317, Narsi
Natha Street, Mumbai 400 009. ... Defendant.

Ms.S.U.Chhabria for the Plaintiff.

None for the Defendant.

CORAM : ABHAY S.OKA, J.

DATED : 8th October, 2007.

ORAL JUDGMENT.:

1. Heard the learned Counsel appearing for the Plaintiff. The suit is listed under the caption of "Undefended suits for exparte decree". The prayer in the suit is for a decree in the sum of Rs.19,45,207.00 together with interest at the rate of 24% per annum.

2. The learned Counsel for the Plaintiff has tendered on record an affidavit in support of the claim

in the suit. The affidavit is taken on record and marked "X" for identification. The learned Counsel also placed on record certain original documents along with a compilation. The compilation is marked "Y" for identification. There is another affidavit tendered by the learned Counsel for the Plaintiff which is taken on record and marked "Z" for identification. The said affidavit records that as of today there are no proceedings pending against the Defendants under the Sick Industrial Companies (Special Provisions) Act, 1985 either before the B.I.F.R. or A.A.I.F.R.

3. The Plaintiffs were appointed as the building contractors by the Defendants for construction of their building. The work order was issued by M/s.Vastu Nirman, the Architects of the Defendants. After taking into account the discount, the total cost of the job was Rs.53,83,145/-. According to the case of the Plaintiffs their running bills were duly certified by M/s.M/s.Vastu Nirman, Architects of the project. The claim in the suit is in respect of the 5th to 8th bills of the plaintiffs which are duly certified by the Architects as well as balance outstanding of the 4th bill. The case of the Plaintiffs is that though the Architects certified the aforesaid bills the payments were not released by the Defendants. A reference has been made to the correspondence between parties and especially the

correspondence made by the Plaintiffs calling upon the Defendants to pay the amount.

4. Along with the compilation of documents copies of the bills which are certified by the Architects have been produced by the Plaintiffs. In view of the assertions made in the affidavit as well as in the documents which are produced, the Plaintiffs have established their case as regards non-payment of the 5th to 8th bills by the Defendants as also a sum of Rs.15,801/- being the balance outstanding towards payment of the 4th bill. In so far as the 4th to 8th bills are concerned the details have been incorporated in letter dated 21st May 1997 sent by the Plaintiffs to the Defendants. The Plaintiffs have claimed a sum of Rs.7,20,000/- by way of damages being loss of business. The damages are on account of the fact that the percentage of the profit was reduced due to less than 36% turn over. The Plaintiffs have stated that they had made all arrangements for completion of the execution of the work order of Rs.57,26,750/-. However, the Defendants did not convey decision about casting third floor slab.

5. There is no written statement filed by the Defendants. The claim made by the Plaintiffs is not challenged. In notice dated 6th March 1998, a demand

has been made for interest at the rate of 24% per annum on the outstanding amount. The Plaintiffs have claimed interest at the said rate upto the date of institution of the suit. The Plaintiffs have also claimed further interest at the rate of 24% per annum from the date of institution of the suit till realisation or payment. Considering the facts and circumstances of the case, though the Claim in the suit has been established, further interest will have to be granted at the rate of 6% per annum.

6. Hence the suit is decreed in terms of prayer clause (a) with modification that the further interest payable will be at the rate of 6% per annum on the principal amount of Rs.16,29,711.91 from the date of institution of the suit till realisation or payment. The Plaintiffs will be entitled to recover proportionate costs of the suit from the Defendants.

7. The Plaintiffs will be entitled to the refund of Court fees as per the Rules.

8. Certified copy is expedited.

Judge.